




## DUAL EVOLUTION EXTENSION

A background photograph of a business meeting. A woman in a light blue blazer is smiling and looking at a man in a dark suit who is using a calculator. They are sitting at a table with papers and coffee cups. The background is a blurred office interior with large windows.

DUAL Evolution  
Tax Audit  
Costs Extension



## **DUAL Evolution Tax Audit Costs**

### **Endorsement**

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# DUAL Evolution Tax Audit Costs

## Endorsement

### Section 1: PREAMBLE

In consideration of the premium, **we** will provide the cover described in this Endorsement, subject to the Insuring Clauses, the Extensions, Exclusions, Definitions and the General Conditions and Exclusions Section.

For the purposes of this Endorsement only, the additional Insuring Clauses, Extensions, Exclusions and Definitions contained herein will apply to all **investigation/s** and **tax audit/s** covered under this Endorsement. To the extent that there is any inconsistency between this Endorsement and the Directors and Officers Liability Policy to which it applies, the terms and conditions contained in this Endorsement will prevail.

The sub-limit specified in the **schedule** applies to all claims made for all **loss** under this Endorsement. Cover is part of and not in addition to the **indemnity limit**.

### Section 2: ADDITIONAL INSURING CLAUSES

#### 2.1 Tax Investigation Cover

**We** agree to pay as **loss** the **policyholder's investigation costs** where the **policyholder** receives written notice of an **investigation** from an **official body** during the **insurance period** up to the conclusion of the **investigation**.

#### 2.2 Tax Audit Costs Cover

**We** agree to pay as **loss** the **policyholder's tax audit costs** where the **policyholder** has received a **tax audit notice** from an **official body** during the **insurance period** up to the conclusion of the **tax audit**.

#### 2.3 Insured Person's Personal Income Tax Audit Cover

**We** agree to pay as **loss** an **insured person's tax audit costs** where the **insured person** has received a **tax audit notice** from an **official body** during the **insurance period** up to the conclusion of the **tax audit**.

### Section 3: EXTENSIONS

Each Extension is automatically included under the **policy** unless specifically stated otherwise in the **schedule**. Extensions are subject to the Insuring Clauses and all other **policy** terms, conditions and exclusions, definitions and the General Conditions & Exclusions Section. All Extensions are subject to the Sub-limit specified in the **schedule** and are part of and not in addition to the Sub-Limit.

#### 3.1 Advancement of Investigation Costs or Tax Audit Costs

**We** agree to advance **investigation costs** or **tax audit costs** reasonably incurred with **our** prior written consent before final disposition of an **investigation** or **tax audit**.

If it is not possible for the **insured** to obtain **our** written consent prior to incurring **investigation costs** or **tax audit costs**, **we** agree to waive prior consent so long as **our** written consent is obtained within 30 days of any **investigation costs** or **tax audit costs** being incurred.

If cover under the **policy** is subsequently determined not to exist, the **insured** must reimburse **us** for any **tax audit costs** or **investigation costs** that **we** have paid in advance, according to their respective rights and interests.

### 3.2 Continuous Cover

Notwithstanding Exclusion Clause 4.1 a. and b. (Prior Known Facts), **we** agree to provide cover in respect of a **tax audit** or **investigation** where the **insured**:

- a) first became aware, prior to the **insurance period** and after the **continuity date** that a **tax audit** or **investigation** might or could arise from facts or circumstances known to the **insured**; and
- b) had not notified the previous insurer or insurers on risk of such facts or circumstances, under any like policy existing prior to the **insurance period**.

**We** have the discretion to apply either the terms and conditions of the Policy in place when the **insured** first became aware of the facts and circumstances, including but not limited to the **indemnity limit** and **deductible**, or the terms and conditions of this **policy**.

### 3.3 Discovery Period

The **insured** may give written notice to **us** of any **investigation** or **tax audit** arising from a **return** filed prior to the end of the **insurance period**, during a **discovery period** immediately following the **insurance period** of:

- a) 60 days, granted automatically with no additional premium payable; or
- b) 12 months, if the **insured** requests such period in writing within 30 days after the end of the **insurance period** and tenders an additional premium of 75% of the expiring annual premium, commencing immediately after the end of the **insurance period**, such premium is payable within 30 days of the receipt by us of such written request; or
- c) 84 months, if a **transaction** takes place and the **insured** requests such period in writing within 30 days following the end of the **insurance period**, on such terms and conditions, if any, and for such additional premium as **we** may reasonably decide.

This Extension is not available if this **policy** is:

- (i) renewed or replaced with any other like tax audit costs policy or coverage; or
- (ii) cancelled or avoided.

Any **discovery period** purchased under this Extension is non-cancellable, and the premium paid for the **discovery period** is fully earned by **us** and is non-refundable.

### 3.4 Public Relations Expenses

**We** will pay the **policyholder's public relations expenses** in the event of an **investigation** or **tax audit** covered under this **policy** up to AU\$50,000.00. This sub-limit is part of the total sub-limit available for this Endorsement.

## Section 4: EXCLUSIONS

**We** will not cover the **insured** in respect of:

### 4.1 Prior Known Facts

a **tax audit** or **investigation** arising out of or in any way connected with any:

- a) actual or alleged facts which were known to the **insured** prior to the commencement of the **insurance period** and which the **insured** knew or ought reasonably to have known might give rise to a **tax audit** or **investigation**;
- b) actual or alleged facts which could have been, or which can be notified under any previous like policy existing prior to the commencement of the **insurance period**;
- c) pending or prior **tax audit** or **investigation** derived from the same or essentially the same facts as are or might be alleged in such pending or prior **tax audit** or **investigation**, as at the commencement of the **insurance period**;

- d) any fact or matter referred to in the **proposal**, or notified under any previous like policy existing prior to the commencement of the **insurance period**; or

#### 4.2 Fraudulent, Dishonest and Wilful Conduct

any **tax audit** or **investigation** arising out of or in any way connected with any **insured**:

- a) gaining any personal profit or advantage to which the **insured** was not legally entitled;
- b) having improperly benefited from any **securities** transaction as a result of information that is/was not available to other sellers or purchasers of such **securities**;
- c) committing any dishonest, fraudulent, criminal or malicious act;
- d) committing any wilful violation or wilful breach of any statute or regulation; or
- e) committing any breach of either Section 182 or Section 183 of the Corporations Act 2001(Cth).

This Exclusion shall only apply if it is established through a judgment or any other final adjudication adverse to the **insured**, or any admission by an **insured**, that the relevant conduct did in fact occur.

#### 4.3 Tax Audit and Investigation Specific

any **tax audit** or **investigation** arising out of or in any way connected with:

- a) any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by an **official body**;
- b) any **tax audit** or **investigation** into services performed by persons or any corporate entity outside of Australia and its external territories or protectorates;
- c) any **tax audit** or **investigation** regarding a **return** that has not been prepared or reviewed by an **accountant**.

### Section 5: ADDITIONAL CONTITIONS APPLYING ONLY TO THIS ENDORSEMENT

#### 5.1 The following condition applies to this Endorsement only:

- a) **We** will have the right to instruct an **accountant** in relation to any **investigation** or **tax audit** covered under this **policy**. The **insured** will have the right to associate in the instruction of the **accountant**.
- b) The **insured** will not admit liability, enter into any settlement, make any admission, offer any payment or assume any obligation in connection with any **investigation** or **tax audit** or, incur any **investigation costs** or **tax audit costs** or **public relations expenses**, without **our** prior written consent, which will not be unreasonably withheld or delayed.
- c) **We** will not be liable for any **investigation costs** or **tax audit costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.
- d) With respect to any **tax audit** or **investigation** involving more than one **insured**, the **insureds** agree that **we** have the right to require the **insureds** to retain **accountants**.

### Section 6: DEFINITIONS

In this **policy**:

- 6.1 **Accountant** means a person or entity that is not an **insured** and is recognised by the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent.



- 6.2 Business description** means the description of the **policyholder's** business activities outlined at Item 3 of the **schedule**.
- 6.3 Continuity date** means the date specified at item 7 of the **schedule**.
- 6.4 Deductible** means the amount or amounts specified in Item 6 of the **schedule** in respect of each Insuring Clause.
- 6.5 Discovery period** means the period of time specified in Extension 3.3 (Discovery Period) during which time written notice may be given to **us** of an **investigation** or **tax audit** which is received by an **insured** either during the **insurance period** or any **discovery period** purchased, but only in relation to a **return** filed prior to the end of the **insurance period** or **transaction**.
- 6.6 Employee** means any natural person who is a past, present or future employee of the **policyholder**, regardless of whether they are employed on a full-time, part-time or casual basis. **Employee** does not include independent contractors.
- 6.7 Fund** means any single employer superannuation fund established for the benefit of **employees**. **Fund** does not include any self-managed, industry or master superannuation funds.
- 6.8 Indemnity limit** means the amounts specified in Item 5 of the **schedule**.
- 6.9 Insurance period** means the period of insurance specified in Item 4 of the **schedule**.
- 6.10 Insured** means an **insured person**, the **policyholder**, or both.
- 6.11 Insured person** means:
- a) any past, present or future director, shadow director, secretary, **officer**, **employee** whilst acting in a managerial function, of the **policyholder**, **trustee**, or a natural person whom, by virtue of any applicable law is deemed to be a director or **officer** of the **policyholder**;
  - b) the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person** in (a) above, but only in respect to a **tax audit** or **investigation** into the affairs of the **insured person**; or
  - c) a legal or de facto spouse, domestic partner of an **insured person** in (a) above, but only in respect to a **tax audit** or **investigation** into the affairs of the **insured person**.
- Insured person** does not include:
- (i) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made for **policyholder**; or
  - (ii) a company or other body corporate.
- 6.12 Investigation** means a formal criminal, administrative or regulatory investigation, examination, hearing or inquiry by an **official body** into the **policyholder** or an **insured person** in their capacity as such, commenced in writing during the **insurance period** which may be operable, in relation to any actual or alleged obligation to pay **tax** or a **return**. For the avoidance of doubt, an **investigation** includes but is not limited to a Risk Review, or comprehensive Risk Review undertaken by the Australian Taxation Office or any State or Territory Revenue Office of Australia.
- 6.13 Investigation costs** means the reasonable fees, costs and expenses of an **accountant**, incurred with **our** prior written consent, which will not be unreasonably withheld or delayed, by or on behalf of an **insured** in:
- a) preparing for, attending or producing documents to an **investigation**; or
  - b) responding to a raid on, or on-site visit to, any **policyholder** by an **official body** that involves the actual or possible production, review copying or confiscation of files or interviews of any **insured person**.
- Investigation costs** do not include the remuneration of any **insured**, the cost of their time or costs or overheads of any **policyholder**.
- 6.14 Loss** means:
- a) **investigation costs**;

- b) **public relations expenses**; or
- c) **tax audit costs**.

However, **loss** does not include:

- (i) fines or penalties (whether civil or criminal) which are uninsurable at law;
- (ii) taxes; or
- (iii) the remuneration of any **insured**, the cost of their time or costs or overheads of any **policyholder**.

**6.15** **Officer** means any company secretary, general counsel or an **employee** who is concerned in, or takes part in, the management of the **policyholder** regardless of the name that is given to their position.

**6.16** **Official body** means any regulator, government or administrative body or agency, official trade body or self regulatory body, including but not limited to the Australian Taxation Office and the State and Territory Revenue Offices, who are legally empowered to investigate the affairs of an **insured**.

**6.17** **Other insurance** means the other insurance policy or policies specified in item 12 of the **schedule**.

**6.18** **Policy** means this policy wording, the **schedule**, the General Conditions & Exclusions Section and any Endorsements attaching to and forming part of the **policy** either at commencement of or during the **insurance period**.

**6.19** **Policyholder** means the entity or entities specified in Item 2 of the **schedule** and any **subsidiaries**.

**6.20** **Pollution** means any substance, solid, liquid, particulate, noise, gaseous or thermal irritant or contaminant including but not limited to smoke vapours, soot, fumes, acids, alkalis, chemicals or waste materials.

**6.21** **Principal Organisation** means the entity or entities specified in item 2 of the **schedule**. **Principal organisation** does not include any **subsidiaries**.

**6.22** **Proposal** means the proposal form, submission and all other supporting documentation and attachments provided to us in the application for this **policy**.

**6.23** **Public relations expenses** means the reasonable fees, costs and expenses of a public relations firm or consultant, or crisis management firm, or law firm retained by the **policyholder** with our prior written consent (which shall not be unreasonably withheld or delayed) to prevent or limit adverse effects or negative publicity in respect of a **tax audit** or **investigation** covered under this Endorsement.

**6.24** **Return** means any return legally required to be, and is actually lodged with, an Australian Commonwealth, Federal or State government or government authority or agency by an **insured** or on an **insured's** behalf.

**6.25** **Schedule** means the schedule attached to this **policy** or any **schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by an authorised representative of **us**.

**6.26** **Securities** means a bond, debenture, note, share, preference share, warrant, option, promissory note or other equity, debt or hybrid security which is issued or given by the **policyholder**.

**6.27** **Subsidiary** means:

- a) any legal entity in which the **principal organisation** owns or controls, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or any entity which is deemed to be the **principal organisation's** subsidiary under any applicable legislation, law or International Accounting Standard.
- b) any legal entity that ceases to be a **subsidiary** of the **principal organisation** during the **insurance period** or prior to commencement of the **insurance period**, provided that the cover provided will only apply in respect of a **wrongful act** that occurred whilst the entity was a **subsidiary** of the **principal organisation**.
- c) any legal entity which is created or acquired by the **policyholder** during the **insurance period**, provided that the legal entity :
  - (i) has total gross assets which are less than 25% of the total gross assets of the **policyholder**; or

- (ii) has gross annual turnover of less than 25% of the total gross annual turnover of the **policyholder**; or
- (iii) has total gross assets which are less than 25% of the total gross assets of the **policyholder** in the United States of America or Canada.

The cover provided in this **policy** will only apply to a **return** filed after the date of creation or acquisition.

#### 6.28

**Tax** means tax assessable under any one or more of the following legislative instruments:

- a) A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- b) any legislation of an Australian State or Territory relating to payroll tax;
- c) Fringe Benefits Tax Assessment Act 1986 (Cth);
- d) Income Tax Assessment Act 1936 (Cth);
- e) Income Tax Assessment Act 1997 (Cth);
- f) Sales Tax Assessment Act 1930 (Cth);
- g) Sales Tax Assessment Act 1992 (Cth);
- h) Superannuation Guarantee (Administration) Act 1992 (Cth); or
- i) Termination Payments Tax (Assessment and Collection Act) 1997 (Cth);

#### 6.29

**Tax audit** means an audit of an **insured's** liability to pay **tax** (following the lodgement of a **return**) for that **tax**.

#### 6.30

**Tax audit costs** means any reasonable fees, charges or disbursements of an **accountant** who is engaged by the **insured** or **us** for work undertaken in response to a **tax audit notice**.

#### 6.31

**Tax audit notice** means any written notification by an **official body** regarding the **insured's** actual or alleged obligation to pay **tax**.

#### 6.32

**Trustee** means an **insured** if validly appointed to act, and while acting in the capacity, as a trustee of a **fund**.

#### 6.33

**Transaction** means any one of the following events:

- a) the **principal organisation** consolidates with or merges into or sells all or a controlling interest in its assets to any other person or entity or group of persons and/or entities acting in concert; or
- b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **principal organisation** or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the **principal organisation**; or
- c) the insolvency of the **principal organisation**;
- d) the appointment of an administrator, liquidator, receiver, receiver and manager or court appointed manager to the **principal organisation**.

#### 6.34

**We/Us/Our** means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters specified in Item 11 of the **schedule**.